NURUL IZZAH ANWAR v.
TAN SRI KHALID ABU BAKAR & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
FAIZAH JAMALUDIN JC
[CIVIL SUIT NO: 23NCVC-88-11-2015]
18 APRIL 2018

TORT: *Defamation – Libel – Statements made by Inspector General of Police and Minister of Rural and Regional Development (defendants) at press conferences – Whether defamatory of complainant – Whether impugned statements exposed complainant to hatred, ridicule and contempt – Statements not made by ordinary men but authoritative figures holding top positions in country – Whether reasonable for ordinary men hearing or reading statements to infer they spoke with authority, truth or knowledge – Whether statements made in occasion of privilege – Whether defence of qualified privilege applicable – Whether privileges defeated by presence of express malice – Failure to particularise which words in respective statements were comments and facts – Whether defendants succeeded in proving statements were fair comments – Damages – Factors considered – Seriousness of libel and impact on complainant's reputation*

TORT: *Defamation – Libel – Qualified privilege – Defence of – Statements made by Inspector General of Police and Minister of Rural and Regional Development at press conferences – Whether defamatory of complainant – Whether impugned statements exposed complainant to hatred, ridicule and contempt – Whether statements made in occasion of privilege – Whether defence of qualified privilege applicable – Whether privileges defeated by presence of express malice – Damages – Factors considered – Whether impugned statements serious libel made against Member of Parliament*

TORT: *Defamation – Libel – Fair comment – Defence of – Statements made by Inspector General of Police and Minister of Rural and Regional Development at press conferences – Whether defamatory of complainant – Whether impugned statements exposed plaintiff to hatred, ridicule and contempt – Failure to particularise which words in respective statements were comments and facts – Whether defendants succeeded in proving statements were fair comments – Damages – Factors considered*

This was a claim for defamation by the plaintiff, a Member of Parliament and Vice President of Parti Keadilan Rakyat ('PKR') against the first defendant, the Inspector General of Police ('D1') and the second defendant ('D2') a Member of Parliament, a Minister of Rural and Regional Development and a member of the Supreme Council of the United Malays National Organisation ('UMNO') for statements made on 22 November 2015 at two separate press conferences in relation to a photograph of the plaintiff and one Jacel Kiram, during her visit to the Philippines. The plaintiff pleaded the impugned statements had caused grievous harm to her

character, honour and reputation and had also caused her great distress. The plaintiff pleaded that the defamatory statement made by D1 'dia patut tahu bahawa tindakan itu, perbuatannya itu, adalah satu tindakan, perbuatan yang boleh diangap sebagai 'treason''. The first defendant had also said at the press conference that the plaintiff could be charged under the Security Offences (Special Measures) Act 2012 ('SOSMA') and s. 124L of the Penal Code as reported by the newscaster on Astro Awani and TV1 on 22 November 2015. As for D2, the plaintiff pleaded that the defamatory statement 'satu tindakan penderhakaan kepada negara yang saya kira boleh ambil tindakan'. The impugned statements made by D1 and D2 were in connection with a photograph of the plaintiff taken with Jacel Kiram, the daughter of Jamalul Kiram III, the late self-proclaimed Sultan of Sulu, who had ordered the attack and intrusion by the Royal Sulu Force into Lahad Datu, Sabah in February 2013. The attack had resulted in the death of seven members of the Malaysian police force and two members of the armed forces. The plaintiff pleaded that the natural and ordinary meanings and/or by way of innuendo of D1's impugned statement was that (i) the plaintiff was the 'dalang' (person who planned, organised, led *etc*, political activities secretly or stealthily) behind the attack and invasion by the Sulu Sultanate armed forces on Sabah in 2013; (ii) she was a traitor to the country; and (iii) she had committed a serious crime. It was the plaintiff's case that the natural and ordinary meaning and/or by way of innuendo of D2's impugned statement was that (i) she was a traitor to the country; (ii) she had declared war and/or is at war with the Yang di-Pertuan Agong; (iii) she was someone who had committed a serious crime; and (d) she was someone who was involved in terrorism and/or was a terrorist. Both D1 and D2 admitted that the impugned statements referred to the plaintiff but they both denied that their impugned statements were defamatory and each raised the defence of qualified privilege and/or fair comment. It was D1's defence that he was the Inspector General of Police and had a duty to the public for matters relating to national security and that he had the duty to explain to the public that the plaintiff's actions may amount to treason, which was within the jurisdiction of the police to investigate. As for D2, he submitted that he was a national leader and was responsible, amongst others, for matters of national interest and that as a Member of Parliament, D2 had the duty to the public in his constituency and the public at large on matters of public interest, where the fact of the said meeting could be taken as an offence of treason under the Prevention of Terrorism Act 2015 ('POTA') and the Penal Code. The issues that arose for the court's determination were (i) whether the words or statements complained of were capable of bearing a defamatory meaning; and (ii) whether the defendants were able to avail themselves to the defences of qualified privilege and/or fair comment.

Held (allowing plaintiff's claim; awarding damages and costs to plaintiff):

(1) D1 was not an ordinary Malaysian when he made the impugned statement at the press conference. As the Inspector General of Police, D1 held the highest position in Malaysia's police force. Any ordinary reasonable man or woman upon hearing such a statement by the Inspector General of Police would get a broad impression from the statement that, *inter alia*, the plaintiff had committed treason and was a traitor to the country and for these crimes, she could be charged under SOSMA and the Penal Code. The D2's statement conveyed the meaning to the ordinary reasonable man hearing his statement that the plaintiff's meeting with Jacel Kiram was a meeting with a member of a group who had declared war against Malaysia; that the plaintiff by meeting Jacel Kiram had committed treason and that she had declared war against the Yang di-Pertuan Agong and for these crimes, action could be taken against her under POTA and the Penal Code. The second defendant was, similarly, not an ordinary Malaysian when he made his statement to the press about the plaintiff. The second defendant was 'a national leader'. Putting oneself in the shoes of the hypothetical ordinary reasonable man, D1 and D2's statements in their natural and ordinary meaning were capable of defamatory meaning of the plaintiff. (paras 38-41)

(2) The statement by the Inspector General of Police that the plaintiff had met with the enemy of the country who was responsible for murdering its armed and police forces and that he considered her actions as treason chargeable under SOSMA and the Penal Code and a statement by a Cabinet Minister and 'national leader' that he considered that the plaintiff had committed treason and that action could be taken against the plaintiff under POTA and the Penal Code for declaring war against the Yang di-Pertuan Agong did in fact 'excite against the plaintiff the adverse opinion of others' and that the words would 'lower the plaintiff in the estimation of right-thinking members of society generally'. These statements would expose the plaintiff to hatred, ridicule and contempt of the ordinary Malaysians to whom the intrusion into Sabah by the Royal Sulu Force in 2013 was common knowledge. The defendants were not ordinary men in the street when they made the impugned statements to the press. They were the Head of the Country's Police Force and a Minister of Cabinet respectively. It would not be unreasonable for the ordinary man hearing or reading their statements to infer that they speak with authority, truth or knowledge. The statements made by the defendants had defamed the plaintiff. (paras 48 & 49)

(3) The impugned statement was made by D1 at a press conference held at Bukit Aman in conjunction with Majlis Sunathon PDRM 2015, which was an official PDRM function. The photographs of the plaintiff and Jacel Karim involved a national security issue and public interest. Accordingly, D1 as the Inspector General of Police, had a duty and a

reciprocal common interest to answer the questions posed by the reporters at the press conference in relation to the photograph during the Majlis Sunathon PDRM 2015. Thus, D1's statement was made on occasion of privilege. (para 67)

(4) D2 had made his impugned statement at a press conference held in Bera, Pahang in conjunction with Majlis Berkhatan Perdana 2015 organised by Pemuda UMNO. The Majlis Berkhatan Perdana was a mass circumcision ceremony of young Muslim boys in D2's parliamentary constituency. It was neither an official Government function nor was it a function organised by the Ministry of Rural and Regional Development of which D2 was the Minister. The statement was not fairly made by D2 in the discharge of his duty as Minister of Rural and Regional Development or Member of Parliament during the Majlis Berkhatan Perdana. D2 did not have a legal, social or moral duty to explain to the members of his constituency and the reporters attending the ceremony the fact that the plaintiff's meeting with Jacel Kiram could be considered as treason and terrorism under POTA. The members of the public attending the said ceremony nor the press reporters covering the ceremony had a reciprocal interest in receiving the information. The statement was not fairly warranted by any reasonable occasion of exigency made for the common convenience and welfare of society. Accordingly, D2's statement was not made on an occasion of privilege. (paras 69, 70, 72 & 73)

(5) As the Inspector General of Police, D1 had access to all the information gathered from the police investigation into the meeting between the plaintiff and Jacel Kiram. He also had the means to enquire from the plaintiff on the circumstances relating to her meeting with Jacel Kiram. However, he chose to make his own unverified assumption that the meeting was not coincidental and that it was pre-planned. For the Inspector General of Police to state that the plaintiff could be considered as having committed treason and attempted sabotage would open the plaintiff to odium and contempt of her fellow citizens. For D1 to impute the commission of a crime by the plaintiff which was punishable by corporal punishment without waiting for the conclusion of the police investigation on her and without enquiring with her the circumstances of the meeting and whether or not it was pre-planned showed express malice on his part. Accordingly, D1 was not able to rely on the defence of qualified privilege. (paras 94, 97, 104 & 105)

(6) The statement made by D2 that for him, the plaintiff's action of meeting a group who had declared war against Malaysia could be considered as treason and that action could be taken against her under POTA and for declaring war against the Yang di-Pertuan Agong under the Penal Code, without checking or seeking an explanation from the plaintiff showed express malice on the part of D2. Accordingly, even if D2's statement was made on occasion of privilege, such privilege was defeated by the

presence of express malice when D2 made the statement. Accordingly, D2 could not avail himself to the defence of qualified privilege. (paras 113 & 114)

(7) Both the D1 and D2s' defence of fair comments failed because they had failed to particularise in their defence which words in the respective statements were comments and which were facts. Nevertheless, even if the defendants had pleaded the requisite particulars as required under O. 78 r. 3(2) of the Rules of Court 2012 and were able to prove their statements were fair comments, based on the same reasons as the finding of express malice on their defence of qualified privilege, the presence of express malice in their statements would defeat their defence of fair comment. (paras 124 & 125)

(8) The plaintiff as a Vice President of PKR had a national and international reputation. She was also a Member of Parliament at the time the impugned statements were made. An imputation that a person had committed treason, sabotage, terrorism and waging war against the Yang di-Pertuan Agong was highly serious and highly adverse to the reputation of any citizen of a country let alone a Member of Parliament, who as a lawmaker was expected to uphold the law and not to commit crimes against the State. The defendants' libel of the plaintiff in their impugned statements were one of the more serious libel made against a Member of Parliament to date. Both D1 and D2 were highly reckless in making the libellous statements without waiting for the completion of the police investigation and without making any enquiry with the plaintiff of the facts and circumstances of the meeting. (paras 134 & 138)

(9) Taking into account (a) the seriousness of the libel; (b) the extent of the publication; (c) the plaintiff's reputation and the adverse impact of the defamatory statements on her reputation; (d) the defendants' lack of remorse; and (e) recent award of damages for libel *ie*, the Federal Court in *Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee*, the damages to be awarded to each of the defendant were (i) the sum of RM400,000 against D1; and (ii) the sum of RM600,000 against D2. A lower sum of damages was awarded against D1 as compared to D2 because D1's defamatory statement was made during an occasion of privilege even though the privilege was defeated by the finding of express malice on the part of D1. (para 140)

Case(s) referred to:

Abdul Khalid Bakar Shah v. Party Islam Se Malaysia (PAS) & Ors [2001] 4 CLJ 15 HC ***(refd)***

Abu Hassan Hasbullah v. Zukeri Ibrahim [2018] 3 CLJ 726 CA ***(refd)***

Adam v. Ward [1917] AC 309 ***(refd)***

Ayob Saud v. TS Sambanthamurthi [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321 HC ***(refd)***

Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461 CA ***(refd)***

A *Dato' Dr Low Bin Tick v. Datuk Chong Tho Chin & Other Appeals [2017] 8 CLJ 369 FC* ***(refd)***
Dato' Dr Tan Chee Khuan v. Chin Choong Seng [2011] 8 CLJ 574 HC ***(refd)***
Dato' Seri Anwar Ibrahim v. Khairy Jamaludin [2018] 3 CLJ 250 HC ***(refd)***
Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor [2010] 5 CLJ 301 HC ***(refd)***
B *Dato' Seri Mohammad Nizar Jamaluddin v. Sistem Televisyen Malaysia Bhd & Anor [2014] 3 CLJ 560 CA* ***(refd)***
Dato' Seri S Samy Vellu v. Penerbit Sahabat (M) Sdn Bhd & Anor (No. 3) [2005] 1 LNS 290 HC ***(refd)***
Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee & Anor [2018] 1 CLJ 145 FC ***(refd)***
Financial Information Services Sdn Bhd v. Hj Salleh Hj Janan [2012] 8 CLJ 885 FC ***(refd)***
C *Harry Isaacs & Ors v. Berita Harian Sdn Bhd & Ors [2012] 1 LNS 1359 CA* ***(refd)***
Hoe Thean Sun & Anor v. Lim Tee Keng [1999] 1 CLJ 187 HC ***(refd)***
Hulton & Co v. Jones [1910] AC 20 ***(refd)***
Jameel And Another v. Wall Street Journal Europe [2007] AC 359 ***(refd)***
JB Jeyaretnam v. Goh Chok Tong [1984] 1 LNS 139 HC ***(refd)***
D *Jeyaratnam Joshua Benjamin v. Lee Kuan Yew [1992] SLR 310* ***(refd)***
Keluarga Communication Sdn Bhd v. Normala Samsuddin & Another Appeal [2006] 2 CLJ 46 CA ***(refd)***
Kian Lup Construction v. Hongkong Bank Malaysia Bhd [2002] 7 CLJ 32 HC ***(refd)***
Lau Yeong Nan v. Life Publisher Bhd & Ors [2004] 1 LNS 384 HC ***(refd)***
Lewis v. Daily Telegraph [1963] 2 All ER 151 ***(refd)***
E *Morgan v. Odhams Press Ltd [1971] 1 WLR 1239* ***(refd)***
Noor Asiah Mahmood & Anor v. Randhir Singh & Ors [2000] 5 CLJ 407 HC ***(refd)***
Pardeep Kumar Om Parkash Sharma & Anor v. Abdullah Sani Hashim & Other Cases [2008] 1 LNS 669 CA ***(refd)***
Paul Elliot v. Richard Rufus [2015] EWCA Civ 121 ***(refd)***
PP v. Dato' Seri Anwar Ibrahim (No 3) [1999] 2 CLJ 215 HC ***(refd)***
F *Ratus Mesra Sdn Bhd v. Shaikh Osman Majid & Ors [1999] 8 CLJ 499 HC* ***(refd)***
S Pakianathan v. Jenni Ibrahim [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233 SC ***(refd)***
Seaga v. Harper [2008] 1 All ER 965 ***(refd)***
Stuart v. Bell [1891] 2 QB 341 ***(refd)***
Syarikat Bekalan Air Selangor Sdn Bhd v. Tony Pua Kiam Wee [2015] 8 CLJ 477 FC ***(refd)***
G *Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Bhd & Anor [1973] 1 LNS 146 HC* ***(refd)***
Tan Ah Tong v. CTOS Data System Sdn Bhd [2016] 1 LNS 90 CA ***(refd)***
Tan Sri Dato' Lim Guan Teik v. Tan Kai Hee [2013] 10 CLJ 771 HC ***(refd)***
Tan Sri Dato' Tan Kok Ping JP lwn. The New Straits Times Press (Malaysia) Bhd & Yang Lain [2010] 3 CLJ 614 HC ***(refd)***
H *Toogood v. Spyring (1834) 1 Cr M & R 181* ***(refd)***
Tun Datuk Patinggi Hj Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors [1995] 1 LNS 304 HC ***(refd)***
Utusan Melayu (Malaysia) Bhd v. Othman Hj Omar [2017] 2 CLJ 413 CA ***(refd)***
Yokomasu Marketing Sdn Bhd & Anor v. Chor Tse Min [2017] 1 LNS 1902 CA ***(refd)***

I **Legislation referred to:**
Defamation Act 1957, s. 10
Penal Code, ss. 124, 124L
Rules of Court 2012, O. 78 r. 3(2), (3)

Other source(s) referred to:

Gatley on Libel & Slander, 10th edn, pp. 108 & 110

Doris Chia, *Defamation Principle and Procedure in Singapore and Malaysia*, LexisNexis, 2016, pp 149, 251 & 332, para 13.5

Sir Brian Neill, Richard Rampton QC, Heather Rogers QC, Timothy Atkinson and Aidan Eardley, *Duncan and Neil on Defamation*, 4th edn, 2015, LexisNexis, p 181

For the plaintiff - Sivarasa Rasiah & Toh Seng Wee; M/s Daim & Gamany

For the 1st defendant & 2nd defendant - Nor Mastura Ayub, & Zureen Elina Hj Mohd Dom; SFCs

Reported by Suhainah Wahiduddin

JUDGMENT

Faizah Jamaludin JC:

Introduction

[1] This is a claim for defamation by the plaintiff, Nurul Izzah binti Anwar, who is the Member of Parliament for Lembah Pantai and Vice-President of Parti Keadilan Rakyat ("PKR") against the first defendant ("D1"), Tan Sri Khalid bin Abu Bakar, who at the material time was the Inspector General of Police and Dato' Sri Ismail Sabri Yaakob, the second defendant ("D2") who is the Member Parliament of Bera, Minister of Rural and Regional Development and member of the Supreme Council of the United Malays National Organisation ("UMNO") for statements they each made on 22 November 2015 at two separate press conferences in relation to a photograph of the plaintiff and Jacel Kiram during her visit to the Philippines.

[2] At the conclusion of full trial of this suit, after considering all the written and oral evidence presented to this court, I held that the D1's and D2's statements were defamatory of the plaintiff. I also found that the defendants could not avail themselves to either the defence of qualified privilege or the defence of fair comment.

[3] Damages and costs were awarded to the plaintiff.

[4] My reasons for the decision are set out in these grounds of judgment.

The Facts

[5] The plaintiff claims that D1's and D2's statements made at two separate press conferences on 22 November 2015 had defamed her. She pleads that the impugned statements had caused grievous harm to her character, honour and reputation and also caused her great distress.

[6] The plaintiff pleads that the defamatory statement made by D1 are the words underlined below. It was made by D1 at a press conference held at

the perkarangan masjid Ibu Pejabat Polis, Bukit Aman in conjunction with Majlis Sunathon PDRM 2015:

> Perasaan saya sendiri sebagai Ketua Polis Negara, saya amat marah lah ya, kerana seorang Ahli Parlimen Malaysia sanggup bertemu dengan musuh Negara kita yang telah melakukan pembunuhan terhadap ... apa nama ... Anggota-anggota keselamatan kita.
>
> Mana tahu, samada serangan sebelum ini telah didalangi oleh pihak-pihak dari sini.
>
> Kita akan siasat siapa juga yang terlibat dalam, apa nama, pertemuan dengan musuh negara. Dia orang mesti tahu ya, seorang Ahli Parlimen pulak tu, dia patut tahu bahawa tindakan itu, perbuatannya itu, adalah satu tindakan, perbuatan, yang boleh dianggap sebagai "treason".
>
> Apa pulak pergi jumpa musuh negara yang telah mengorbankan beberapa anggota pegawai polis dan anggota tentera.

[7] During the trial, D1 admitted that he also said at the press conference that the plaintiff can be charged under the Security Offences (Special Measures) Act 2012 ("SOSMA") and s. 124L of the Penal Code as reported by the newscaster on Astro Awani and TV1 on 22 November 2015. D1 agreed that the broadcaster's statement in the TV1 news:

> Menurut beliau, polis boleh mengambil tindakan terhadap Nurul Izzah di bawah Akta Keselamatan Langkah-Langkah Khas 2012 dan Seksyen 124 Kanun Keseksaan ...

accurately reported his statement that the police can take action against the plaintiff under SOSMA and s. 124 of the Penal Code. D1 clarified that he said that plaintiff can be investigated under s. 124L of the Penal Code.

[8] The plaintiff pleads that the defamatory statement made by D2 are the words underlined below. D2 made the statement at a press conference held in Bera, Pahang in conjunction with Majlis Berkhatan Perdana 2015 organised by Pemuda UMNO in Dewan Rakan Muda Bera, Pahang.

> Jadi bagi saya, bertemu dengan kumpulan yang mengisytiharkan perang terhadap Malaysia ini saya anggap sebagai *satu tindakan penderhakaan kepada negara yang saya kira boleh diambil tindakan* bukan sahaja di bawah POTA tetapi di bawah kanun Keseksaan iaitu mengishtiharkan perang terhadap Yang Di Pertuan Agong. Jadi saya harap pihak berkuasa tidak memandang remeh perkara ...

[9] The impugned statements made by D1 and D2 were in connection with a photograph of the plaintiff taken with Jacel Kiram during her visit to the Philippines. Jacel Kiram is the daughter of Jamalul Kiram III, who was known to be the late self-proclaimed Sultan of Sulu. It is alleged that Jamalul Kiram III had ordered the attack and intrusion by the Royal Sulu Force into Lahad Datu, Sabah in February 2013. The attack resulted in the death of seven members of the Malaysian police force and two members of the armed forces.

Chronology Of Events

[10] The chronology of events below sets out the dates and timelines in connection with (a) the plaintiff's visit to the Philippines and the plaintiff's photograph with Jacel Kiram; (b) the plaintiff's press statements on her visit to the Philippines and events following the uploading of the photograph of her and Jacel Kiram on the latter's Facebook page; and (c) the publication of D1 and D2's impugned statements. It also sets out the dates on which the various police reports were filed against the plaintiff.

(a) Plaintiff's Visit To The Philippines

DATE/TIMELINE	EVENT
9 November 2015	The plaintiff and Chua Tian Chang ("PW2") visited the Philippines on the invitation of the Council on Philippines Affairs, an NGO associated with the office of the Mayor of Manila, Joseph Estrada, the former President of the Philippines.
Upon arrival Philippines and lunch	The plaintiff and PW2 met with the Joseph Estrada at reception ceremony at the Manila Town Hall. After lunch the plaintiff gave a few interviews to the Philippines local media. They met with Mr Fernando Pena from the Council on Philippines Affairs, who was the main organiser of the visit.
6pm	The Plaintiff and PW2 were taken to Pasto Restaurant for dinner where she was introduced to the guests, which included candidates running for elections, members of Congress, members of local government and local businessmen and businesswomen. The plaintiff testified that neither she nor PW2 was informed of the guest list prior to the dinner.
During dinner	The plaintiff testified that she left the room where the dinner was held for a while to give an interview to a local radio station. When she returned to the room, she was approached by a woman wearing a headscarf (tudung) who asked about the imprisonment of the plaintiff's father and Malaysian politics generally. It was the first time she met the woman, who she subsequently knew as Jacel Kiram. Jacel Kiram was one of the electoral candidates running under the ticket of the Vice-President of the Philippines, Jejomar Binay. The plaintiff and Jacel Kiram can be identified by their headscarves in the photographs as they are the only two ladies wearing headscarves at the dinner. A photo marked exh. P4(1) shows Jacel Kiram sitting five people away from the plaintiff (on her left) at the start of the dinner.

	Exhibit P4 (2) shows the plaintiff after she came back into the dining room after the radio interview. The photo shows that Jacel Kiram was sitting one person away to the plaintiff's right.
End of dinner	At the end of the dinner, Fernando Pena, on behalf of the organiser and the owners of Pasto Restaurant, asked all the dinner guests to pose for a photograph with a "Free Anwar" posters. Exhibit P4(3) is a photo of the group holding "Free Anwar" posters at a doorway. Exhibit P4(4) is a photo of the plaintiff and Jacel Kiram together at the same doorway where a partial Christmas tree can be seen. Exhibit P4(5) is a photo of the plaintiff and Jacel Kiram together at the same doorway but where the whole Christmas tree can be seen in the background.
10 November 2015 Noon	The plaintiff and PW2 attended the birthday party of Jejomar Binay and had lunch with him.
After lunch	The plaintiff and PW2 flew home to Malaysia.

[11] The plaintiff testified that as the dinner guests were leaving the restaurant after the photo session, the lady in the tudung (headscarf), she now knows to be Jacel Kiram, approached her and asked to take a photograph together with her. The plaintiff said that as a guest, she did not think it was polite to reject the lady's request to take a photograph with her. These photos are shown as exhs. P4(4) and P4(5) referred to in the chronology of events above.

(b) The Plaintiff's Press Statements On Her Visit To The Philippines And Photograph With Jacel Kiram And Police Reports Filed Against The Plaintiff

DATE/TIMELINE	EVENT
19 November 2015	The plaintiff issued a press statement on her Facebook account entitled "Visit to the Philippines"[1].
20 November 2015	Police reports filed by members of the public on the plaintiff's photo with Jacel Kiram.
21 November 2015	The plaintiff issued a press statement on her Facebook account entitled "My Loyalty is to Malaysia"[2]. In the statement, the plaintiff stated: I am aware of the concerns raised about the photos taken of me and Jacel Kiram last 9th November 2015. I must reiterate that I did not seek out or set up any meeting, nor ever acquainted before with Jacel Kiram.

	... I understand that families of the fallen servicemen in the Lahad Datu incursion, affected members of the Sabahan community, including Malaysian in general, are hurt by the photographs of me and for this I am deeply regretful of".
21 November 2015	The plaintiff issued a press statement on her Facebook account in Bahasa Malaysia entitled "Kesetiaan Saya kepada Malaysia"[3] where she stated: "Saya sedia maklum kegusaran yang timbul akibat gambar saya bersama Jacel Kiram pada 9 November 2015. Di sini saya ingin menegaskan bahawa saya tidak sekali-kali memanggil mesyuarat atau pertemuan dan tidak pernah berkenalan dengan Jacel Kiram. ... Saya tahu dan faham ahli-ahli keluarga patriot dan perajurit yang terkorban akibat pencerobohan Lahad Datu dan rakyat Malaysia amnya cukup terasa dan marah akibat gambar saya dan Jacel Kiram, dan saya berasa amat kesal atas hakikat ini."
21 November 2015	Police reports filed by members of the public on the plaintiff's photo with Jacel Kiram.

(c) The Defendants' Impugned Statements And Police Reports Filed Against The Plaintiff

DATE/TIMELINE	EVENT
22 November 2015	D1 made the impugned statement at a press conference held at the perkarangan masjid Ibu Pejabat Polis, Bukit Aman in conjunction with Majlis Sunathon PDRM 2015.
	D2 made the impugned statement at a press conference held in Bera, Pahang in conjunction with Majlis Berkhatan Perdana 2015 organised by Pemuda UMNO in Dewan Rakan Muda Bera, Pahang.
22 November 2015 23 November 2015 25 November 2015 27 November 2015 28 November 2015 1 December 2015	Police reports filed by members of the public on the plaintiff's photo with Jacel Kiram.

Publication Of The Defendants' Statements

[12] D1's statement was broadcasted on the evening news on Astro Awani and TV1 on 22 November 2015. It was reported in newspapers including the New Straits Times, Harian Metro and the Star on 23 November 2015.

[13] D2's statement was broadcasted on the evening news on Nasional 5 TV1 on 22 November 2015. It was reported in newspapers including the Edge Financial Daily, Utusan Malaysia, Sinar Online and the Malay Mail on 23 November 2015.

Plaintiff's Case

[14] The plaintiff pleads that the natural and ordinary meanings and/or by way of innuendo of D1's impugned statement are that:

(a) the plaintiff is the "dalang" behind the attack and invasion by the Sulu Sultanate armed forces on Sabah in 2013;

(b) she is a traitor to the country; and

(c) she has committed a serious crime.

[15] The word "dalang" as defined by the Kamus Pelajar Dewan Bahasa dan Pustaka edn. 2 means "orang yg merancang, mengatur, memimpin dsb sesuatu kegiatan politik secara sulit atau sembunyi-sembunyi". Translated to English "dalang" means "person who planned, organised, led etc. political activities secretly or stealthily".

[16] It is the plaintiff's case that the natural and ordinary meaning and/or by way of innuendo of D2's impugned statement is that:

(a) she is a traitor to the country;

(b) she had declared war and/or is at war with the Yang di-Pertuan Agong;

(c) she is someone who had committed a serious crime; and

(d) she is someone who is involved in terrorism and/or was a terrorist.

Defendants' Case

[17] Both D1 and D2 admit that the impugned statements refer to the plaintiff. The defendants also admit that the statements were published. They both deny that their impugned statements were defamatory and each raises the defence of qualified privilege and/or fair comment.

[18] D1 pleads the defence of qualified privilege and alternatively the defence of fair comment based on the following facts:

(a) He is the Inspector General of Police and has a duty to the public for matters relating to national security;

(b) His statements were in connection with the plaintiff's meeting with Jacel Kiram who is the daughter of Jamalulail Kiram, the leader of the Royal Sulu Force that attacked Sabah in 2013 resulting in the death a number of the country's security forces; and

(c) He has the duty to explain to the public that the plaintiff's actions may amount to treason, which is within the jurisdiction of the police to investigate.

[19] D2 raises the defence of qualified privilege and/or fair comment on the following facts:

(a) He is a national leader and is responsible amongst others for matters of national interest;

(b) His statements were in connection with the plaintiff's meeting with Jacel Kiram who is the daughter of Jamalulail Kiram, the leader of the Royal Sulu Force that attacked Sabah in 2013 resulting in the death a number of the country's security forces; and

(c) As a Member of Parliament, D2 has the duty to the public in his constituency and the public at large on matters of public interest, where the fact of the said meeting can be taken as an offence of treason under the Prevention of Terrorism Act 2015 ("POTA") and the Penal Code.

Analysis

[20] It is settled law that in an action for defamation, the onus lies on the plaintiff to establish, on a balance of probabilities, that the impugned statement published referred to the plaintiff and that it had defamatory imputations. There must be publication of the alleged defamatory statement and its publication as soon as it is published to a third person. In *Ayob Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321; [1989] 1 MLJ 315), Mohamed Dzaiddin J (as he then was) held that:

> In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show (1) the words are defamatory; (2) the words refer to the plaintiff; and (3) the words were published.

[21] In determining whether the plaintiff has discharged her burden of proof, this court must decide on the following questions:

(i) Were the defendants' statements published?;

(ii) Did the statements refer to the plaintiff; and

(iii) Were the statements capable of bearing defamatory meaning?

[22] It is not disputed that D1's and D2's statements were published and the statements referred to the plaintiff. Both D1 and D2 admit making the impugned statements. They also admit that the statements referred to the plaintiff and that they were published in newspapers and online news portals and broadcasted on national television *via* the Astro Awani and TV1 evening news on 22 November 2015.

[23] Accordingly, the issues for this court's determination are whether the words or statements complained of are capable of bearing a defamatory meaning and whether the defendants are able to avail themselves to the defences of qualified privilege and/or fair comment.

Are The Impugned Statements Defamatory?

[24] The Court of Appeal in *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461; [1999] 1 MLJ 371; [1999] 1 AMR 753 laid down the test to be undertaken by a trial court in determining whether the impugned words are defamatory. The test is an objective one and is two-staged. The stages are:

First: whether the words complained of are capable of bearing a defamatory meaning.

Second: If the answer is in the affirmative, whether the words are in fact defamatory.

In Malaysia, the answers to both these questions are to be decided by a judge alone.

[25] The two-stage test in *Chok Foo Choo* has been cited with approval and used in subsequent High Court and Court of Appeal cases (see for eg, *Yokomasu Marketing Sdn Bhd & Anor v. Chor Tse Min* [2017] 1 LNS 1902; [2017] 1 MLJU 1925; [2017] AMEJ 1548; *Abu Hassan Hasbullah v. Zukeri Ibrahim* [2018] 3 CLJ 726; [2017] MLJU 1676; *Dato' Seri Anwar Ibrahim v. Khairy Jamaludin* [2018] 3 CLJ 250; [2017] 11 MLJ 673; *Utusan Melayu (Malaysia) Bhd v. Othman Hj Omar* [2017] 2 CLJ 413; [2017] 2 MLJ 800; *Tan Ah Tong v. CTOS Data System Sdn Bhd* [2016] 1 LNS 90).

Are The Words In The Statements Capable Of Bearing A Defamatory Meaning?

[26] Whether the words complained of are capable of bearing a defamatory meaning is a question of law which turns on the construction of the words in both impugned statements. In doing so, this court has to consider the natural and ordinary meaning of the statements as a whole and in the context and circumstances used (see *Keluarga Communication Sdn Bhd v. Normala Samsuddin & Another Appeal* [2006] 2 CLJ 46; [2006] 2 MLJ 700; [2006] 2 AMR 604 MR and *Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 5 CLJ 301; [2010] 2 MLJ 492).

[27] The Court of Appeal in *Keluarga Communication v. Normala Samsuddin* held that when considering whether the words complained of is defamatory of a plaintiff, it is necessary to consider the statement as a whole. Zulkefli Ahmad Makinuddin JCA (as he then was) in citing *Gatley on Libel & Slander*, 10th edn, pp. 108 and 110 held:

> [16] At the outset we would state that the test to be applied when considering whether a statement is defamatory of a plaintiff is well settled in that it is an objective one in which it must be given a meaning a

reasonable man would understand it and for that purpose, that is, **in considering whether the words complained of contained any defamatory imputation, it is necessary to consider the whole article**.

(emphasis added)

[28] In *Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd*, Harmindar Singh JC (as he then was) held that:

[25] **The proper approach would also be to consider the words complained of in the context of the whole article** (see *Lee Kuan Yew v. Derek Gwyn Davies & Ors* [1990] 1 MLJ 390). A plaintiff cannot select an isolated passage in an article and complain of that alone if other parts of the article throw a different light on that passage (see *Charleston & Anor v. News Group Newspaper Ltd & Anor* [1995] 2 AC 65 at p. 70 per Lord Bridge citing Duncan & Neill on Defamation (2nd Ed) at para 4.11).

(emphasis added)

[29] Accordingly, this court in considering whether the words complained of by the plaintiff are capable of bearing a defamatory meaning must consider D1's statement and D2's statement as a whole and not just parts of the statements that were underlined by the plaintiff in the statement of claim.

Test of Defamatory Nature of a Statement

[30] What is the test of the defamatory nature of a statement? Mohd Azmi J (as he then was) in *Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 1 LNS 146; [1973] 2 MLJ 56, held that the test is as follows:

Thus, the test of defamatory nature of a statement **is its tendency to excite against the Plaintiff the adverse opinion of others**, although no one believes the statement to be true. Another test is: **would the words tend to lower the Plaintiff in the estimation of right-thinking members of society generally**?

(emphasis added)

[31] The leading case in Singapore for determining the natural and ordinary meaning of a statement is *JB Jeyaretnam v. Goh Chok Tong* [1984] 1 LNS 139; [1985] 1 MLJ 334. The test was followed and cited with approval by the Court of Appeal in *Chok Foo Choo*. Gopal Sri Ram JCA (as he then was) in delivering the judgment of the Court of Appeal held that:

In my judgment, the test which is to be applied lies in the question: **do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part**? If the question invites an affirmative response, then the words complained of are defamatory. (See *JB Jeyaretnam v. Goh Chok Tong* [1986] 1 LNS 67; [1985] 1 MLJ 334.)

(emphasis added)

[32] The cases of *Syed Husin Ali* and *JB Jeyaretnam* were cited with approval by Richard Malanjum J (as he then was) in *Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors* [1995] 1 LNS 304; [1996] 1 MLJ 393, where His Lordship held:

> Thus, the test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinion of others, although no one believes the statement to be true. Another test is: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally? The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime, dishonesty, untruthfulness, ingratitude or cruelty.

[33] The House of Lords in *Lewis v. Daily Telegraph* [1963] 2 All ER 151 held that the question is whether the words are capable of bearing a defamatory meaning to the ordinary man and not one of legal construction. Lord Reid held:

> ... **There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense**. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs.
>
> **What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words**.
>
> (emphasis added)

[34] Therefore, in considering whether D1's and D2's statements were capable of being defamatory of the plaintiff, I have to consider what defamatory inferences or implications the ordinary reasonable man can draw from them. As Lord Reid in *Lewis v. Daily Telegraph* said:

> ... [M]ore often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning.

[35] Sharp LJ in *Paul Elliot v. Richard Rufus* [2015] EWCA Civ 121 quoting Lord Reid in *Morgan v. Odhams Press Ltd* [1971] 1 WLR 1239 and Lord Devlin in L*ewis v. Daily Telegraph* held that the court in considering whether the words are capable of defamatory meaning to the notional ordinary reasonable man, it should allow itself "a certain amount of loose-thinking" and that the layman "reads in an implication much more freely than a lawyer" and "would not engage in the sort of minute analysis (textual or legal) that a lawyer would" (see para. 18 of the UK Court of Appeal's judgment in *Paul Elliot v. Richard Rufus*).

D1's Statement

[36] In my view, the ordinary reasonable man hearing D1's statement as broadcasted on the Astro Awani and TV1 news would understand from D1's statement that the plaintiff had met with an enemy of country who had killed members of Malaysia's armed forces and police force; that D1 as the Inspector General of Police is very angry that the plaintiff as a Member of Parliament would be willing to meet with the enemy of the country who had murdered our armed forces and police; and that she ought to have known, especially since she is a Member of Parliament that her action can be considered as treason and that she can be charged under SOSMA and the Penal Code.

[37] As Sharp LJ of the UK Court of Appeal observed in *Paul Elliot v. Richard Rufus*, the ordinary reasonable man "would normally read (or hear) the relevant words once and would therefore get a broad impression of what is said".

[38] D1, when he made the statement, was not an ordinary Malaysian. As the Inspector General of Police, D1 held the highest position in Malaysia's police force. In my judgment, any ordinary reasonable man or woman upon hearing such a statement by the Inspector General of Police would get a broad impression from the statement that the plaintiff had committed treason and is a traitor to the country. He or she would also understand that D1 is very angry that the plaintiff as a Member of Parliament deign to meet with an enemy of the country who had committed murder against our armed and police forces; that the previous Lahad Datu incursion could have been stealthily organised or assisted by "dalangs" from Malaysia; that the plaintiff's crime of meeting Jacel Kiram, is particularly heinous since she as a Member of Parliament should have known better than to meet with an enemy of the country; and for these crimes she can be charged under SOSMA and the Penal Code.

D2's Statement

[39] In my opinion, D2's statement conveys the meaning to the ordinary reasonable man hearing his statement that the plaintiff's meeting with Jacel Kiram was a meeting with a member of a group who had declared war against Malaysia; that the plaintiff by meeting Jacel Kiram had committed treason and that she had declared war against the Yang di-Pertuan Agong and for these crimes, action can be taken against her under POTA and the Penal Code; that D2 hopes that the authorities will not treat the matter lightly and that D2 is grateful and commends the early action of the Deputy Prime Minister Dato' Seri Dr Zahid Hamidi who said that the police will take follow up action.

[40] Like D1, D2 similarly was not an ordinary Malaysian when he made his statement to press about the plaintiff. D2 was Member of Parliament, a member of UMNO's Supreme Council, a Minister of Cabinet and, as pleaded in his defence, "a national leader".

Finding

[41] For these reasons, putting myself in the shoes of the hypothetical ordinary reasonable man, I find that D1's and D2's statements in their natural and ordinary meaning are capable of defamatory meaning of the plaintiff.

Are The Statements In Fact Defamatory?

[42] Having found that D1's and D2's impugned statements are capable of bearing defamatory meaning, the next step is for me to ascertain whether the words complained of were in fact defamatory of the plaintiff. As held by the Court of Appeal in *Chok Foo Choo v. The China Press*, this is a question of fact dependent on the facts and circumstance of the case.

[43] In this present case, I find that D1's statement as a matter of fact defamed the plaintiff. He expressly said that the plaintiff in meeting with Jacel Kiram had met with the enemy of country who was responsible for the murder of our armed forces and police and that her action can be considered as treason; that she can be charged under SOSMA and s. 124L of the Penal Code. Section 124L of the Penal Code states that:

> Attempt to commit sabotage
>
> 124L. Whoever attempts to commit sabotage or does any act preparatory thereto shall be punished with imprisonment for a term which may extend to fifteen years.

I find that D1's statement that the plaintiff can also be charged with attempt to commit sabotage under the Penal Code corresponds with his statement "mana tahu sama ada serangan sebelum ini telah didalangi oleh pihak-pihak dari sini"

[44] I also find that D2' statement had in fact defamed the plaintiff. He said that he considered that her action was treasonous and that action can be taken against her under POTA and the Penal Code for declaring war against the DYMM Yang di-Pertuan Agong.

[45] During cross-examination, D2 testified that the statement was merely his opinion and the words "bagi saya" and "saya anggap" are both related to his opinions. He said it was his opinion that she is a "penderhaka" (treasonous) and that he did not declare that she was a "penderhaka". In answer to the plaintiff's counsel's suggestion during cross-examination to D2 that his opinion that the plaintiff is a "penderhaka" is a very serious allegation, D2 replied "Saya tak pasti serius atau tidak, terserah kepada interpretasi individu lah."[4]

[46] As held by the Court of Appeal of Singapore in *Jeyaretnam Joshua Benjamin v. Lee Kuan Yew* [1992] 2 SLR 310, the defendant's intention or what he actually meant in his statement is irrelevant. What is relevant is what the ordinary man understood from the words in the statement. The Singapore Court of Appeal in *Jeyaratnam Joshua Benjamin v. Lee Kuan Yew* held that:

> [19] **In determining the natural and ordinary meaning of the words complained of, the sense or meaning intended by the appellant is irrelevant**. Nor for such purpose is the sense in which the words were understood by the respondent relevant. Nor is extrinsic evidence admissible in construing the words. **The meaning must be gathered from the words themselves and in the context of the entire speech made by the appellant on that occasion**. It is the natural and ordinary meaning as understood by reasonable members of the audience at the Bedok car park on that evening using their general knowledge and common sense.
>
> (emphasis added)

[47] I find that the "sting" in both statements is that the plaintiff in meeting Jacel Kiram (i) had met with an enemy of the country who had killed members of our armed forces and police force; (ii) had committed treason and (iii) had declared war against the DYMM Yang di-Pertuan Agong; and (iv) that for the action of meeting with Jacel Kiram, she can be charged under SOSMA, POTA and the Penal Code for committing or supporting terrorist acts; attempting to commit sabotage and for declaring war against the Yang di-Pertuan Agong. The short title of SOSMA is:

> An Act to provide for special measures relating to security offences for the purpose of maintaining public order and security and for connected matters.

and the short title of POTA is:

> An Act to provide for the prevention of the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country and for the control of persons engaged in such acts and for related matters.

[48] In my judgment, a statement by the Inspector General of Police that the plaintiff had met with the enemy of the country who was responsible for murdering its armed and police forces and that he considers her action can be considered as treason chargeable under SOSMA and the Penal Code and a statement by a Cabinet Minister and "national leader" that he considers that she had committed treason and that action can be taken against her under POTA and the Penal Code for declaring war against the Yang di-Pertuan Agong does in fact "excite against the plaintiff the adverse opinion of others" and that the words "would lower the plaintiff in the estimation of right-thinking members of society generally". I find that these statements would expose the plaintiff to hatred, ridicule and contempt of the ordinary Malaysians to whom the intrusion into Sabah by the Royal Sulu Force in 2013, which resulted in the death of members of Malaysia's armed and police forces, is common knowledge.

[49] With respect to learned Senior Federal Counsel acting on behalf of the defendants, I find that the qualifying words in the defendants' statements "perasaan saya sendiri", "boleh dianggap", "saya anggap" and "saya kira"

A are not antidotes to the sting of defamation in both these statements. In my judgment, the fact that the defendants had qualified their statements with these words do not remove the adverse opinion, hatred, ridicule and contempt against the plaintiff of the ordinary reasonable man hearing or reading the defendants' statements. Neither would these qualifying words
B halt the decline of the plaintiff's estimation in the eyes of right-thinking members of society nor their adverse opinion of her. The defendants were not ordinary men in the street when they made the impugned statements to the press. They were the Head of Country's Police Force and a Minister of Cabinet respectively. It would not be unreasonable for the ordinary man
C hearing or reading their statements to infer that they speak with authority, truth and knowledge.

Defences

[50] The defences pleaded by the defendants against the plaintiff's claim are that (i) the impugned statements were published on a privileged occasion and
D are thus protected by qualified privilege; and/or (ii) the impugned statements were fair comments.

[51] Malice is a necessary element in actions of libel and slander. It is trite law that the mere publication of the defamatory statements implies malice
E on the part of the defendants. Malice is presumed based on the finding that D2's statement was defamatory of the plaintiff (see *Abdul Khalid @ Khalid Jafri Bakar Shah v. Parti Islam Se Malaysia & Ors* [2001] 4 CLJ 15; [2002] 1 MLJ 160 at 173G-I; *Dato' Seri S Samy Vellu v. Penerbit Sahabat (M) Sdn Bhd & Anor (No. 3)* [2005] 1 LNS 290; [2005] 5 MLJ 561 at [60]). In *Adam v. Ward* at p. 318, Lord Finley LC said:

F

> ... from the mere publication of defamatory matter malice is implied, unless the publication was on what is called a privileged occasion.

[52] This principle of law is summarised in "*Defamation Principle and Procedure in Singapore and Malaysia*" as follows[5]:

G

> The law presumes that the defamatory words are published falsely and maliciously and the plaintiff is not required to prove it. This is referred to as 'malice in law'. This type of malice need not be pleaded or proved. However, where the publication is premised on an occasion of qualified privilege or fair comment on a matter of public interest, the presumption of 'malice at law' and the plaintiff is required to prove the existence of
H malice as a matter of fact in order to maintain the action and defeat the said defence.

[53] Accordingly, as I have found that both D1 and D2's statements were defamatory of the plaintiff, it is implied the defendants made the statement with malice. The defendants can defeat this implication of malice by proving,
I among others, that the statement was published in a privileged occasion and/or they were fair comments of public interest matters.

Qualified Privilege

[54] It is settled law that a defendant in raising the defence of qualified privilege, the burden is on the defendant to prove that the occasion on which the impugned words were published was an occasion of privilege. It is for the judge to rule whether or not in fact there is an occasion of privilege. This common law rule was established in the English case of *Toogood v. Spyring* (1834) 1 Cr M & R 181 and followed in subsequent English cases. It was restated by the House of Lords in *Adam v. Ward* [1917] AC 309, which case was cited with approval by our Federal Court in several cases including *Financial Information Services Sdn Bhd v. Hj Salleh Hj Janan* [2012] 8 CLJ 885; [2010] MLJU 1990 and more recently in *Dato' Dr Low Bin Tick v. Datuk Chong Tho Chin & Other Appeals* [2017] 8 CLJ 369; [2017] MLJU 1099 and *Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee & Anor* [2018] 1 CLJ 145; [2017] MLJU 1525.

[55] In relation to the test of whether or not an occasion of qualified privilege exists, *Duncan and Neil on Defamation*, 4th edn states as follows:[6]

> *... the duties and interest which found an occasion of qualified privilege must exist in fact. This is an objective question, and it is not sufficient that the person who makes the defamatory communication honestly believes that he had legitimate duty or interest to make it or his audience to receive* it. Thus in *Adam v. Ward*, Lord Atkinson said:
>
> > While on the question of malice the *bona fide* belief of the defendant that he was under a moral or social duty to make the communication is relevant and important, the existences, in fact, of this duty or interest, nor merely the defendant's belief in its existence, is the thing which is relevant to the question whether the occasion was or was not privileged.
>
> In assessing whether the objective test had been satisfied in any particular case the court may have regard to the relationship between the publisher and the recipient or recipients of the publication.
>
> (emphasis added)

[56] Once the judge has decided as a matter of law that the occasion is privileged, the plaintiff may rebut this privilege, which is only qualified, by proving that there was express malice. Whether or not there is express malice is a question of fact and the burden is on the plaintiff to prove the existence of express malice. In the UK, it is for the jury to decide whether there is any evidence on which a reasonable man can find malice. In Malaysia, the question of whether there is express malice is one which is to be decided by the judge.

[57] This two questions and sequence of determination for this court where the defence of qualified privilege is raised is succinctly summarised in *Hulton & Co v. Jones* [1910] AC 20 by Buckley LJ where he said:

> There are two questions. The first whether the occasion was a privileged occasion, and if it was, then secondly, whether there was evidence of malice.

[58] Doris Chia in her book "*Defamation Principle and Procedure in Singapore and Malaysia*" sums up the stages for considering the defence as follows:

> There are two stages to consider when relying on the defence of qualified privilege:
>
> (1) the defendant has to plead and prove all facts necessary to show that the publication was made on an occasion of qualified privilege (the privilege may be lost if the communication exceeds the limit of the duty or interest); and
>
> (2) the privilege is said to be "qualified" because notwithstanding that (1) above is proved, the defence can still be defeated if the plaintiff shows that the defendant was actuated by express malice at the time the publication was made and not by some duty or interest.[7]

Were The Impugned Statements Published Upon A Privileged Occasion?

[59] This court must first decide whether D1's and D2's impugned statements were published upon a privileged occasion. It is settled law that an occasion is said to be privileged where, among others, the statement was made pursuant to a common interest or pursuant to a legal, social or moral duty.

When Is An Occasion Privileged?

[60] The test of whether an occasion is privileged or not is stated in the well-known and oft-quoted passages of Parke B's judgment in *Toogood v. Sprying* (1 C.M. & R. 181) at p. 193:

> ... fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned
>
> If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society; and the law has not restricted the right to make them within any narrow limits.

[61] Lord Finlay LC in *Adam v. Ward* [1917] AC 309 at p. 317 in relation to privileged occasion said as follows:

> ... If the communication was made in pursuance of a duty or on a matter in which there was a common interest on the party making and the party receiving it, the occasion is said to be privileged. This privilege is only qualified and may be rebutted by proof of express malice.

[62] Lord Dunedin in *Adam v. Ward* emphasised that it is the occasion on which the statement is made is privileged. It is not the statement itself which is privileged.

> *Strictly speaking, it is the occasion on which a statement is made that is privileged, and the phrase that such and such a statement is privileged would be more accurately, though perhaps, more clumsily, expressed by saying that, the statement having been made on a privileged occasion*, malice cannot be implied from defamatory

expressions therein, but must be proved as a real fact. The malice to be proved must be real malice, and is generally called "express malice" to distinguish it from the malice which is implied from the defamatory words themselves. The duty of deciding whether the occasion is privileged is cast upon the judge alone, ...

(emphasis added)

[63] The Federal Court in *Financial Information Services Sdn Bhd* cited with approval the principles of qualified privilege set out in *Toogood v. Spyring* (which Abdull Hamid Embong FCJ referred to as the "*Toogood* test") and quoted with approval the following passage from *Stuart v. Bell* [1891] 2 QB 341:

[18] The conditions for qualified privilege to arise as a defence was laid out long ago in *Toogood v. Spyring* [1834] 1 CM & R 181 and from this passage of Baron Parke's which has been described by Lindley LJ in *Stuart v. Bell* [1891] 2 QB 341 as having "been frequently quoted, and always with approval." That illustrious passage speaking of the publication of statements false in fact and injurious to the character of another state:

> The law considers such publication as malicious unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases the occasion prevents the inference of malice, which the law draws from unauthorised communications, and affords a qualified defence depending on the absence of actual malice. If *fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society; and the law has not restricted the right to make them within any narrow limits*. (emphasis added)

[19] **The underlying principle enunciated by *Toogood* is**, as observed by Lord Macnaghten in *Macintosh v. Dun* [1908] AC 390, **that the protection is accorded for the common convenience and welfare of society and not the convenience of an individual or the convenience of a class**. Thus, despite the contention of learned counsel for FIS that the company was formed for the common good or benefit of its members, the defamatory publication which is now the subject matter of this suit, would not have fit into the category of being one that is protected because it was not fairly warranted by any reasonable occasion of exigency made for the common convenience and welfare of society (the *Toogood* test).

(emphasis added)

[64] Therefore, in deciding whether D1's and D2's statements were made in occasions of privilege, based on the applicable case law, I have to decide whether the statements were made by each of the defendants:

(a) fairly made by a person in the discharge of some public or private duty, whether legal or moral;

(b) fairly made pursuant to a reciprocal common interest of the party making and the party receiving it; or

(c) fairly warranted by any reasonable occasion of exigency made for the common convenience and welfare of society.

D1's Statement

[65] D1 made the impugned statement at a press conference held at the perkarangan masjid Ibu Pejabat Polis, Bukit Aman in conjunction with Majlis Sunathon PDRM 2015. He made the statement in reply to questions on the photograph of the plaintiff and Jacel Kiram, which was uploaded on the latter's Facebook account, by reporters during a press conference at the Majlis Sunathon. D1 testified that the Majlis Sunathon was an official function of the PDRM. He said that the statements were made to reporters in answer to questions pertaining to the photograph, a national security issue, which had attracted public interest and which was within the powers of the PDRM to investigate.

[66] D1 testified that an investigation into the plaintiff was commenced one or two days after the photograph was uploaded onto Jacel Kiram's Facebook account and that the plaintiff was interviewed by the police the week after D1's statement. Her cautioned statement was recorded during the interview but no charge has been made against her to date under SOSMA, POTA, s. 124L of the Penal Code or any other law. D1 agrees that the word "treason" is not used in the Penal Code.

Finding

[67] The evidence shows that the Majlis Sunathon PDRM 2015 was an official PDRM function, the photographs of the plaintiff and Jacel Kiram involved a national security issue and public interest. Accordingly, I find that D1 as the Inspector General of Police, had a duty and a reciprocal common interest to answer the questions posed by the reporters at the press conference in relation to the photograph during the Majlis Sunathon PDRM 2015. For these reasons, I find that D1's statement was made on an occasion of privilege.

[68] Learned counsel for the plaintiff, Mr Sivarasa, submits that it is the plaintiff's position that D1 was entitled to but he was under no duty to respond to the reporters when asked about the photograph of the plaintiff with Jacel Kiram. The plaintiff submits that D1 went too far and was out of scope of the privilege normally accorded to public officials like him who are asked about matter relating to their scope of work and responsibility. Respectfully, I have to disagree with Mr Sivarasa's submission. In my view, based on the case law discussed above, the issue of whether D1 went too far and outside the scope of his duty in his statement goes to the question of whether the statement was in excess of privilege thus evidencing express malice and not whether or not the statement was made on an occasion of privilege.

D2's Statement

[69] D2 made his impugned statement at a press conference held in Bera, Pahang in conjunction with Majlis Berkhatan Perdana 2015 organised by Pemuda UMNO in Dewan Rakan Muda Bera, Pahang. D2 testified that he made the impugned statement in his capacity as a Cabinet Minister and that he had the right to give his view in relation to national security issues. However, at para. 8(c) of the statement of defence, D2 pleaded that as a Member of Parliament he had the duty to explain to the members of his constituency and the public, a matter of public interest and the fact that the plaintiff's meeting can be considered as treason under POTA and the Penal Code.

[70] Pemuda UMNO is the youth wing of UMNO, a political party of which D2 is a member of its Supreme Council. The Majlis Berkhatan Perdana is a mass circumcision ceremony of young Muslim boys in D2's parliamentary constituency. It was neither an official Government function nor was it a function organised by the Ministry of Rural and Regional Development of which D2 was the Minister.

[71] D2 testified that the main topic for the press conference was the Majlis Berkhatan. He replied as follows when asked by plaintiff's counsel about the press conference:

Plaintiff's Counsel:	Apa maksud PC?
D2:	Er, memang ada press conference lah
"Plaintiff's Counsel:	Press conference ...
D2:	Tentang berkhatan lah. Tajuk utama adalah program tersebut, biasanya di PC kita adalah berkaitan dengan program. Jadi, pokoknya adalah tentang program. Jadi saya explain lah, beberapa orang yang terlibat ... adakah ini program tahunan, jadi semua yang berkaitan dengan programs. Itu gist, peringkat awal soalan tentang program.[8]

Finding

[72] For these reasons, I do not find that the statement was fairly made by D2 in the discharge of his duty as Minister of Rural and Regional Development or Member of Parliament during the Majlis Berkhatan Perdana. In my view, D2 did not have a legal, social or moral duty to explain to the members of his constituency and the reporters attending the mass circumcision ceremony organised by Pemuda UMNO in his constituency of Bera, the fact that the plaintiff's meeting with Jacel Kiram can be considered as treason, terrorism under POTA and waging war against the Yang di-Pertuan Agong under the Penal Code. Neither do I find that the members of the public attending the ceremony nor the press reporters covering the

ceremony had a reciprocal interest in receiving the information. I also do not find that the statement was fairly warranted by any reasonable occasion of exigency made for the common convenience and welfare of society.

[73] Accordingly, I do not find that D2's statement was made on an occasion of privilege.

Was There Express Malice In The Impugned Statements?

[74] In this instant case, D1 and D2 each pleaded the defence of qualified privilege in its traditional sense in that their statements were made on occasions which were privileged. Such defence of qualified privilege can be defeated if the plaintiff succeeds in showing there was express malice when the defendant made the impugned statement.

[75] Learned Senior Federal Counsel for the defendants submit that D1's and D2's defence of qualified privilege is in its traditional sense ie, that their statements were made on occasions which were privileged. She submits that they did not plead the *Reynolds* public interest defence. Under the *Reynolds* public interest defence, it is the statement that is privileged and not the occasion on which it is published.

[76] In *Syarikat Bekalan Air Selangor Sdn Bhd v. Tony Pua Kiam Wee* [2015] 8 CLJ 477; [2015] MLJU 522; [2015] 6 MLJ 187, the Federal Court following the decision *Jameel And Another v. Wall Street Journal Europe* [2007] AC 359 and *Seaga v. Harper* [2008] 1 All ER 965 extended the qualified privilege defence to cover the material and not the occasion on which it was published provided there is a reciprocal interest between the defendant to publish the material and the recipients to receive it provided the defendant meets the test of responsible journalism. The Federal Court held that the *Reynolds* public interest defence does not apply where there was a failure by the defendant to verify the accuracy of the information in question. Lord Hoffman in *Jameel* held that where the *Reynolds* public interest defence is established:

> It is the material which is privileged, not the occasion on which it is published. There is no question of the privilege being defeated by proof of malice because the propriety of the conduct of the Defendant is built into the conditions under the material is privileged.

[77] Having determined that the D1's statement was made on an occasion of privilege; the next step is for me to decide whether the plaintiff has successfully proven on a balance of probabilities evidence of express malice on the part of D1 when he made the statement. Such proof of express malice would defeat the defence of qualified privilege.

[78] As for D2, since I have found that his statement was not made on an occasion of privilege, there is no necessity for me to determine whether there was any evidence of express malice in his statement.

[79] Express malice can be evidenced (i) extrinsically from the facts and circumstances in which the statement was made; or (ii) intrinsically from the words in the impugned statement itself.

[80] *Adam v. Ward* is the leading authority on the question of excess of privilege. It held that where a libel contains defamatory matter not referable to the duty or interest which gives rise to the privileged occasion, such matter is outside the occasion and is not protected. Such excess of privilege in part of a defamatory publication may also be evidence of malice as to the whole of the statement. Lord Dunedin said in *Adam v. Ward* at p. 327 that:

> There may be an excess of the privilege in the sense that something has been published which is not within the privileged occasion at all, because it can have no reference to it.

His Lordship went on to state that if the judge finds that the statements are:

> "referable and appropriate to the privileged occasion" … "the next question [the judge] has to put to himself is whether the defamatory words complained of are capable of affording, from their own nature alone, evidence of express malice".
>
> "[If] the judge thinks that the words are so capable, then he must leave it to the jury to say the words alone, or in conjunction with extrinsic evidence, if there be any such, express malice has been proved".

[81] The burden is on the plaintiff to prove that there was express malice (see *Adam v. Ward*; *Ayob Saud v. TS Sambanthanmurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321; [1989] 1 MLJ 315; *Hoe Thean Sun & Anor v. Lim Tee Keng* [1999] 1 CLJ 187; [1999] 3 MLJ 138; [1998] MLJU 213; *Tan Sri Dato' Tan Kok Ping JP lwn. The New Straits Time Press (Malaysia) Bhd & Yang Lain* [2010] 3 CLJ 614; [2010] 2 MLJ 694; *Financial Information Services Sdn Bhd v. Hj Salleh Hj Janan* [2012] 8 CLJ 885; [2012] MLJU 1761.

[82] In order for the plaintiff to discharge its burden of proof that the impugned statements were actuated with express malice, the plaintiff has to prove that the words in the statements are capable of evidence of express malice or was in excess of privilege; or prove such express malice in conjunction with extrinsic facts.

D1's Statement

[83] Where the defendant pleads the defence of qualified privilege or fair comment, O. 78 r. 3(3) of the Rules of Court 2012 ("ROC") requires a plaintiff who intends to allege that the defendant was actuated with malice to plead the particulars of the facts and matters on which malice is to be inferred in the reply to the defence. It was held in *Ratus Mesra Sdn Bhd v. Shaikh Osman Majid & Ors* [1999] 8 CLJ 499; [1999] 3 MLJ 529, failure to plead such particulars is fatal to a plaintiff's allegation of express malice.

[84] In this instant case, the plaintiff pleaded particulars of express malice in her reply to the defendants' plea that the impugned statements were published upon a privileged occasion or that they were fair comments.

[85] The particulars of express malice pleaded by the plaintiff in para. 2 of her reply to D1's defence that the impugned statements were published upon a privileged occasion and/or were fair comments are as follows:

> 2. Perenggan 4 Pembelaan adalah dinafikan dan Plaintif menyatakan bahawa di dalam menerbitkan perkataan-perkataan yang dinyatakan dalam perenggan 4 Pernyataan Tuntutan, Defendan Pertama berniat jahat secara nyata.
>
> Butir-Butir
>
> [Selaras dengan Aturan 78 Kaedah 3 Kaedah-Kaedah Mahkamah 2012]
>
> (i) Defendan Pertama telah sekian lama membuat kritikan yang tidak mempunyai justifikasi dan tidak berasas terhadap Plaintif secara terbuka;
>
> (ii) Defendan Pertama telah mengeluarkan perkataan-perkataan tersebut sebelum sebarang siasatan dilakukan ke atas Plaintif di mana Defendan Pertama sendiri atas kapasitinya sebagai Ketua Polis Negara telah menyatakan bahawa siasatan akan dilakukan;
>
> (iii) Pada setiap masa yang material Defendan Pertama mempunyai pengetahuan berkenaan dengan kenyataan akhbar Plaintif bertarikh pada 20.11.2015 dan 21.11.2015 yang menjelaskan keadaan di mana pertemuan tersebut berlaku;
>
> (iv) Defendan Pertama menerbitkan perkataan-perkataan tersebut dengan melulu tanpa pengesahan, dan tanpa merujuk kepada Plaintif untuk mendapatkan penjelasan dan/atau tanpa menunggu satu siasatan lengkap dilakukan terhadap Plaintif terlebih dahulu.

[86] In respect to the particulars of D1's express malice pleaded by the plaintiff, I find that no evidence was adduced by the plaintiff to prove her allegation in para. 2(i) of her reply that D1 had for long time been openly making unjustified and baseless criticisms of the plaintiff.

[87] D1 testified in court that the police had commenced investigation and an enquiry paper was opened on the plaintiff a day or two after the photograph of the plaintiff and Jacel Kiram was uploaded on the latter's Facebook account. Accordingly, this disproves the allegation in para. 2(ii) of her reply that D1 made the statement before investigation on the plaintiff was commenced.

[88] With respect to learned counsel for the plaintiff, I am unable to infer from the Astro Awani and TV1 broadcasts and the fact that the police had commenced investigations on 9 November 2015 that D1 knew about the plaintiff's press statements on 19 November 2015 and 21 November 2015 explaining the circumstances of the visit. Whilst the fact that D1 made his

impugned statement on 22 November 2015 ie, the day after the plaintiff's statement of regret is telling, I don't find that this fact is enough to infer that D1 knew about the plaintiff's statement of regret. This is because no primary evidence was produced to prove the assertion that D1 knew about the plaintiff's press statements before making his impugned statements on 22 November 2015. Also, D1 consistently during cross-examination by plaintiff's counsel denied that he knew about the plaintiff's press statements. Accordingly, I find that the plaintiff failed to prove on a balance of probabilities that D1 knew about the plaintiff's press statements prior to making his statement as pleaded in para. 2(iii) of her reply.

[89] D1's statement was broadcasted on Astro Awani and TV1, which videos of the broadcast was tendered in court as exhs. P6 and P8 respectively. The plaintiff submits that the words spoken by D1 were reflected in the text spoken by the newsreaders in both broadcasts. The TV1 newsreader says that the police view is that the meeting as "dirancang" and the Astro Awani newsreader says that the meeting "tidak dilihat sebagai konteks kebetulan". Learned Senior Federal Counsel acting for D1, submitted that the words spoken by the newsreaders are hearsay and are accordingly inadmissible. During the oral submissions before me, Mr Sivarasa acting for the plaintiff, clarified that the words of the newsreaders were not to prove the words spoken by D1 but to prove that they were uttered by the newsreaders in describing the meeting were similar.

[90] Based on the excerpt of the book entitled *"Hearsay: A Practical Guide Through the Thicket by Irving Younger"* which formed part of Augustine Paul J's judgment in *PP v. Dato' Seri Anwar Ibrahim (No 3)* [1999] 2 CLJ 215; [1999] 2 MLJ 1, quoted by learned Senior Federal Counsel in her submission, I find that the statement is not hearsay. This is because the newsreaders' statements were not offered to prove the truth of what they assert but to prove that the statements made by the newsreaders of two different television stations in describing the meeting were strikingly similar.

[91] D1 in cross-examination admitted that he was of the view that the meeting was pre-planned. He denies that he said that the meeting between the plaintiff and Jacel Kiram "tidak dilihat seperti konteks kebetulan" as reported by Astro Awani or "adalah dirancang" as reported by TV1. During re-examination by learned Senior Federal Counsel, D1 testified that he formed the opinion that the meeting was planned after reading the reports and police reports filed. But D1 denied that he stated it during the press conference as reported. D1 testified:

> Saya membuat pandangan itu selepas membaca laporan-laporan dan melihat laporan-laporan polis yang dibuat oleh orang ramai dan saya berpandangan sebegitu tapi saya tidak menyebutnya semasa sesi bersama pemberita itu.[9]

[92] However, no evidence was produced in court to support D1's view that the meeting was pre-planned. Learned Senior Federal Counsel objects to the plaintiff's contention that D1's position that the meeting was pre-planned and not coincidental because it was not pleaded. With respect to learned Senior Federal Counsel, I am unable to agree with her submission. In my view, the fact that D1 thought that the meeting was pre-planned is evidence that he made the statement without verification and without checking with the plaintiff as pleaded in para. 2(iv) of her reply.

[93] The Court of Appeal in *Dato' Seri Mohammad Nizar Jamaluddin v. Sistem Televisyen Malaysia Bhd & Anor* [2014] 3 CLJ 560; [2014] 4 MLJ 242 cited with approval the decision of Wan Hamzah J in *S Pakianathan v. Jenni Ibrahim* [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233; [1988] 2 MLJ 173; . Abang Iskandar JCA in delivering the judgment of the Court of Appeal held in respect of malice:

> [37] We are of the view that malice, not unlike intention, is a state of mind. Invariably, unless there is an express admission by the defendant that he has been malicious in his conduct, then the presence of malice can only be deduced or inferred from the circumstances obtaining in each case. In the case of *S Pakianathan v. Jenni Ibrahim* [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233; [1988] 2 MLJ 173 Wan Hamzah J (as he then was) had this to say on the subject matter of malice, at p. 179 of the report:
>
> > *Where the defendant purposely abstained from inquiring into the facts or from availing himself of means of information which lay at hand when the slightest inquiry would have shown the true situation, or where he deliberately stopped short in his inquiries in order not to ascertain the truth, malice may rightly be inferred.*
>
> [38] The English case of *Lee v. Ritchie* [1904] 6F (Ct of Sess) 642 was cited as authority for such legal proposition. With respect, the position as stated by learned Justice Wan Hamzah J still remains good law.
>
> (emphasis added)

[94] As the Inspector of General of Police, D1 had access to all the information gathered from the police investigation into the meeting. He also had the means to enquire from the plaintiff on the circumstances relating to her meeting with Jacel Kiram. However, he chose to make his own unverified assumption that the meeting was not coincidental and that it was pre-planned.

Finding

[95] I find that based on the decision of *S Pakianathan v. Jenni Ibrahim*, which was approved and followed by the Court of Appeal in *Dato Seri Mohammad Nizar Jamaluddin v. Sistem Televisyen (M) Bhd & Anor*, D1's failure to make any inquiry or availing himself to the facts of the meeting before making the statement, infers express malice on the part of D1.

[96] I also find that the statement made by D1 at the press conference exceeded the occasion of privilege. In my view, the words in the statement intrinsically evidence malice on the part of D1. Read in the context of D1's own admission that he considered the meeting not to be coincidental but was pre-planned and the fact that PDRM's investigation into the matter had not been completed, the phrases "seorang Ahli Parlimen Malaysia sanggup bertemu dengan musuh Negara kita", "Dia orang mesti tahu ya, seorang Ahli Parlimen pulak tu, dia patut tahu bahawa tindakan itu, perbuatannya itu, adalah satu tindakan, perbuatan, yang boleh dianggap sebagai "treason"", "Apa pulak pergi jumpa musuh negara yang telah mengorbankan beberapa anggota pegawai polis dan anggota tentera" shows express malice.

[97] Treason is one of the most heinous crimes to be committed by any citizen of a country. Even though the word "treason" is not expressly provided in the Penal Code, it is universally understood to mean as a betrayal of a citizen of his/her country. In my view, for the Inspector General of Police to state that the plaintiff can be considered ("boleh dianggap") as having committed treason and attempted sabotage would open the plaintiff to odium and contempt of her fellow citizens. This is even more so for the plaintiff who as a lawmaker is expected to uphold the laws of this country and not commit offences against the State.

[98] I find that the words "seorang Ahli Parlimen Malaysia sanggup bertemu dengan musuh Negara kita", and "Apa pulak pergi jumpa musuh negara yang telah mengorbankan beberapa anggota pegawai polis dan anggota tentera" conveys the message that the plaintiff purposely went to meet with Jacel Kiram. This is corroborated by D1's testimony that he was of the view that the plaintiff's meeting with Jacel Kiram was not coincidental.

[99] In my view, to insinuate that the plaintiff purposely went to meet with Jacel Kiram and to state that the plaintiff's action can be considered as treason or sabotage, chargeable under SOSMA or s. 124L of the Penal Code just from a photo of the plaintiff and Jacel Kiram and police reports filed prior to the completion of the police investigation and without enquiring from the plaintiff the facts and circumstances of the photo, shows evidence of express malice on the part of D1.

[100] The plaintiff's action against D1 is for libel ie, the defamatory imputation that is in permanent physical format (see *Lau Yeong Nan v. Life Publisher Berhad & Ors* [2004] 1 LNS 384; [2004] 7 MLJ 7 at [12]; *Kian Lup Construction v. Hong Kong Bank Malaysia Berhad* [2002] 7 CLJ 32; [2002] 7 MLJ 283 at 298A-B). This is as opposed to an action in slander ie. a defamatory statement made in a transitory form. Generally, a plaintiff cannot bring an action for slander unless he or she can prove special damage. However, there are four categories of cases which the law considers so

injurious that damage caused by the slander so injurious that it is presumed and are actionable without proof of damage[10]. One of these categories is slander imputing the commission of a crime which will subject the plaintiff to physical punishment.

[101] The Court of Appeal in *Pardeep Kumar Om Prakash Sharma v. Abdullah Sani Hashim* [2008] 1 LNS 669; [2009] 2 MLJ 685 summarised the position as follows:

> [23] ... **Slanderous words, irrespective, will be actionable *per se* in four instances, with the relevant one for purposes of this case, being if the words impute the commission of a crime for which the plaintiff may be punished corporally as opposed to a mere fine** (*C Sivanathan v. Abdullah bin Dato Haji Abdul Rahman* [1984] 2 CLJ Rep 463; [1984] 1 CLJ 89; [1984] 1 MLJ 62; ...). Corporal punishment includes imprisonment, whipping and hanging. As the allegation against the respondent was kidnapping his action against the appellants was actionable *per se*.
>
> (emphasis added)

[102] Richard Malanjum J (as he then was) in *Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors* held that attributing crime on a plaintiff is a "typical type of defamation". His Lordship said:

> The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime, dishonesty, untruthfulness, ingratitude or cruelty.

[103] D1 had imputed in his statement that the plaintiff had committed treason and that she can be charged under SOSMA and s. 124L of the Penal Code for attempted sabotage punishable with imprisonment for a term of up to 15 years, which is a capital punishment.

Finding

[104] Based on the cases discussed above, I find that for D1 to impute the commission of a crime by the plaintiff which is punishable by corporal punishment without waiting for the conclusion of the police investigation on her and without enquiring with her the circumstances of the meeting and whether or not it was pre-planned shows express malice on his part.

[105] For these reasons, I find that the plaintiff had proved on a balance of probabilities the particulars of express malice in para. 2(iv) of her reply. Accordingly, I find that D1 is not able to rely on the defence of qualified privilege.

D2's Statement

[106] The particulars of express malice pleaded by the plaintiff in para. 5 of its reply to D2's defence that the impugned statements were published upon a privileged occasion and/or were fair comments are as follows:

5. Perenggan 8 Pembelaan adalah dinafikan dan Plaintif menyatakan bahawa di dalam menerbitkan perkataan-perkataan yang dinyatakan dalam perenggan 4 Pernyataan Tuntutan, Defendan Kedua berniat jahat secara nyata.

Butir-Butir

[Selaras dengan Aturan 78 Kaedah 3 Kaedah-Kaedah Mahkamah 2012]

(i) Pada setiap masa yang material Defendan Kedua mempunyai pengetahuan berkenaan dengan kenyataan akhbar Plaintif bertarikh pada 20.11.2015 dan 21.11.2015 yang menjelaskan keadaan di mana pertemuan tersebut berlaku;

(ii) Defendan Kedua telah sekian lama membuat kritikan yang tidak mempunyai justifikasi dan tidak berasas terhadap parti-parti politik pembangkang serta terhadap Plaintif melalui media-media cetak dan elektronik. Keterangan menyokong ini akan dikemukakan semasa perbicaraan;

(iii) Objektif kritikan yang tidak mempunyai justifikasi dan tidak berasas di atas adalah untuk menyebabkan kerosakan kepada parti-parti politik pembangkang dan supaya memberi sokongan kepada parti-parti politik kerajaan semasa, terutamanya UMNO (United Malays National Organisation) yang mana Defendan Kedua mempunyai kepentingan ke atasnya;

(iv) Defendan Kedua Ahli Majlis Tertinggi parti politik UMNO dan Plaintif merupakan seteru politik beliau;

(v) Defendan Kedua menerbitkan perkataan-perkataan tersebut dengan melulu tanpa pengesahan, dan tanpa merujuk kepada Plaintif untuk mendapatkan penjelasan dan/atau tanpa menunggu satu siasatan lengkap dilakukan terhadap Plaintif terlebih dahulu.

[107] As I have found that D2's statement was not made on an occasion of privilege, D2 cannot as a matter of law avail himself to the defence of qualified privilege. Accordingly, it would not be necessary for the plaintiff to prove that there was express malice on the part of D2.

[108] However, in the event that an appellate court disagrees with my finding, I will analyse the facts of this case to determine whether the plaintiff has proven the particulars of express malice on the part of D2 as pleaded in her reply.

[109] I find that the plaintiff had not adduced any evidence during the trial to prove the particulars pleaded in items (i), (ii), (iii) and (iv) of para. 5 of her reply.

[110] In his statement, D2 had imputed that the plaintiff had committed crimes which were punishable not just by corporal punishment but also by capital punishment. D2 in his statement had imputed the plaintiff had committed treason, waged war against the Yang di-Pertuan Agong and is a

terrorist or involved in acts of terrorism. Punishments for these offences are death, which is similar to that for murder. The Penal Code stipulates that waging or attempting to wage war against the Yang di-Pertuan Agong is punishable with death or life imprisonment. Punishment for the commission of a terrorist act that results in death is also death. Further, pursuant to POTA, a person who "has been or is engaged in the commission or support of terrorist acts involving listed terrorist organizations in a foreign country " can be detained without trial for a period of two years.

[111] D2 during cross-examination confirmed that he did not make any effort to enquire whether the plaintiff had made explanation of the issue before or after he made the impugned statement. This is shown in the notes of proceedings as below:

Plaintiff's Counsel:	Saya ulang soalan saya sebab jawapan Dato' Sri lain sedikit. Ada tak Dato' Sri melakukan apa-apa usaha untuk tahu ... usaha untuk tahu sama ada Plaintiff sudah membuat penjelasan tentang isu ini?
D2:	Tidak ada.[11]
Plaintiff's Counsel:	So 22 November, adakah Dato' Sri buat apa-apa usaha mengetahui penjelasan Palintiff tentang isu ini, untuk pertemuan Jacel Kiram?
D2:	Tidak.
Plaintiff's Counsel:	Selepas itu pun tidak?
DW:	Tidak[12]

Finding

[112] I find that the plaintiff had proven on a balance of probabilities item (v) of para. 5 of her reply in that D2 published the impugned statement without seeking confirmation and checking with the plaintiff to seek her explanation and/or without waiting for a full investigation to be done on the plaintiff. D2's failure to enquire into the circumstances and facts of the meeting from the plaintiff before making an imputation of the commission a serious crime by the plaintiff, which is punishable by imprisonment and death, evidences express malice on the part of D2.

[113] For this reason, I find that D2's statement that for him the plaintiff's action of meeting a group who had declared war against Malaysia can be considered as treason and that action can be taken against her under POTA and for declaring war against the Yang di-Pertuan Agong under the Penal Code, without checking or seeking an explanation from the plaintiff shows express malice on the part of D2.

[114] Accordingly, even if D2's statement was made on occasion of privilege, such privilege is defeated by the presence of express malice when D2 made the statement. Accordingly, D2 cannot avail himself to the defence of qualified privilege.

Fair Comment

[115] Both defendants plead, in the alternative, that their statements were fair comments.

[116] "Fair comment" is a defence to an action for libel or slander that the words are a fair comment on a matter of public interest: see *Gatley on Libel and Slander*, 11th edn. To succeed in a defence of fair comment, the defendants must show that the impugned words were:

(a) a comment and not a statement of fact. The Court of Appeal in *Harry Isaacs & Ors v. Berita Harian Sdn Bhd & Ors* [2012] 1 LNS 1359; [2012] 4 MLJ 191 held that:

> [19] ... It is trite law that the defence of fair comment is concerned with the protection of comment and not facts. Diplock J in *Silkin v. Beaverbrook Newspapers Ltd* [1958] 1 WLR 743 at p 747 put it this way:
>
> > It is important to keep in mind that his defence is concerned with the protection of comment, not imputations of fact. If the imputation is not of fact, a ground of defence must be sought elsewhere. Further, to be within this defence the comment must be recognisable as comment, as distinct from an imputation of fact. The comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made; see the discussion in *Duncan and Neill on Defamation* (2nd Ed), 19830 pp 58-62).

(b) the comment is on a matter of public interest. In *Dato' Seri Mohammad Nizar Jamaluddin v. Sistem Televisyen Malaysia Bhd & Anor* [2014] 3 CLJ 560; [2014] 4 MLJ 242, the Court of Appeal held that:

> [50] The law on the defence of fair comment is that if a defendant can prove that the defamatory statement is an expression of opinion on a matter of public interest and not a statement of fact, he or she can rely on the defence of fair comment. The courts have said that whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on or what may happen to them or to others, then it is a matter of public interest on which everyone is entitled to make fair comment.

A The facts relied on to support the comment must be relevant and relate to the comment and must be true. However, it is not necessary for a defendant to prove that all the facts pleaded in support of the statement are true. He only has to prove that the material facts that are necessary to form the basis of the comments are true. In *Dato' Seri Mohammad* B *Nizar Jamaluddin*, the Court of Appeal held that:

> [51] The comment must be based on true facts which are either contained in the publication or are sufficiently referred to. It is for the defendant to prove that the underlying facts are true. If he or she is unable to do so, then the defence will fail. As C with justification, the defendant does not have to prove the truth of every fact provided the comment was fair in relation to those facts which are proved. However, fair in this context, does not mean reasonable, but rather, it signifies the absence of malice. The views expressed can be exaggerated, obstinate or prejudiced, provided they are honestly held. If the claimant D can show that the publication was made maliciously, the defence of fair comment will not succeed.

(c) The comment must be fair and honestly held. (See *Dato' Seri Mohammad Nizar Jamaluddin; Hussin Mohd. Ali v. Ho Kay Tat & Anor; and Chok Foo Choo @ Chok Kee Lian v. The China Press*).

E **[117]** Where a defendant pleads the defence of fair comment, O. 78 r. 3(2) of the ROC requires the defendant to plead the following particulars:

> (2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist F of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

G **[118]** In *Noor Asiah Mahmood & Anor v. Randhir Singh & Ors* [2000] 5 CLJ 407; [2000] 2 MLJ 175, the High Court held that to succeed in the defence of fair comment, the defendants must establish four elements, which are:

(i) The words complained of are comment, although they may consist or include inferences of fact;

H (ii) The comment is on a matter of public interest;

(iii) The comment is based on facts; and

(iv) The comment is one which a fair-minded person can honestly make on the facts proved.

I

[119] In *Dato' Dr Tan Chee Khuan v. Chin Choong Seng @ Victor Chin* [2011] 8 CLJ 574; [2011] MLJ 608, it was held that the defendant's plea of fair comment failed because the particulars pleaded did not comply with O. 78 r. 3(2) in that the defendants in that case failed to show what are the words in the impugned statement was comments and which are facts. The learned High Court Judge held that:

> [29] In short, fair comment is not available as a defence to statements of facts which are defamatory; the available defence is justification. Fair comment is applicable to comment only i.e. an express of opinion. *I am of the view that the proposition of law above is consistent with the requirements under O. 78 r. 3(2) of the RHC which the defendant must draw a distinction between expression of opinion for which he can claim fair comment and statements of fact for which his comments are based and for which he must prove*. Fair comment must be confined to expressions of opinion but not on assertions of facts unless the defendant is able to prove those facts to be true ...
>
> [30] *I find that the failure of the defendant to plead the requisite particulars for which he must do so pursuant to O. 78 r. 3(2) of the RHC is a clear breach which will render the defence of fair comment unsustainable and failed as the parties as well as the court will not know which statement is an expression of opinion and which is a statement of facts* ...
>
> (emphasis added)

[120] The decision in *Dato' Dr Tan Chee Khuan* was followed with approval in *Tan Sri Dato' Lim Guan Teik v. Tan Kai Hee* [2013] 10 CLJ 771; [2014] 9 MLJ 363, where the High Court held:

> [51] ... *In my view the defendant must particularise which are the words in the impugned statements of the plaintiff are comments and which are facts; the defendant's reliance on the particulars in paras 5-17 of the amended defence do not comply with the requirement of O. 78 r. 3(2) of the RHC as the defendant has failed to show what are the words in the impugned statements that are comment and those that are facts*. (see *Dato' Dr Tan Chee Khuan v. Chin Choong Seng @ Victor Chin* [2011] 8 CLJ 574; [2011] 8 MLJ 608 at pp. 623-624 at pp. 589D-591B).
>
> [53] Hence I agree with the plaintiff's submission that the defence of fair comment is wholly unsustainable because based on para 4 of the amended defence, the defendant has failed to comply with O. 78 r. 3(2) of the RHC. With this finding, I am of the view it is not necessary for me to discuss any further whether the defendant has proven the elements required to establish fair comment.
>
> (emphasis added)

[121] D1 pleads in para. 4 and D2 pleads in para. 8 of the defence respectively that the impugned statements were fair comments based on the same particulars, which they contend why the statements were published on an occasion of privilege. Both D1 and D2 failed to particularise in their defence which of the words in their respective impugned statements are comments and which of the words are facts.

[122] Based on the decision in *Dato' Dr Tan Chee Khuan v. Chin Choong Seng* [2011] 8 CLJ 574; [2011] MLJ 608 and in *Tan Sri Dato' Lim Guan Teik v. Tan Kai Hee* [2013] 10 CLJ 771; [2014] 9 MLJ 363, I find that the defendants' failure to particularise which of the words in their respective impugned statements are comments and which are facts are fatal to their defence of fair comments. Accordingly, the defendants' defence of fair comment fails.

Test Of Express Malice For Defence Of Fair Comment Is The Same As For Qualified Privilege

[123] The Court of Appeal in *Dato' Seri Mohammad Nizar bin Jamaluddin* affirmed that the test for express malice for fair comment is the same as qualified privilege. Abang Iskandar JCA in delivering the judgment of the Court of Appeal held as follows:

> [52] In this case, as regards the defence of fair comment, the learned trial judge had ruled that there was no malice being present when the defendants made the defamatory statements. *We had deliberated on the matter of malice in dealing with the defence of qualified privilege above. Suffice for us to say that as a matter of law, the defence of fair comment, like one of qualified privilege, depends on the fact that when it was made, it was made without malice.* It is for the plaintiff to prove that the impugned statement was made with malice aforethought.
>
> [53] In this case, **on the same reasons as above, pertaining to our findings on the defence of qualified privilege, the defendants, with respect, cannot succeed on the defence of fair comment** because there was malice that can be readily inferred from the surrounding circumstances as found in the evidence pertaining to the publication of the defamatory statements against the plaintiff. With respect, we agree with learned counsel for the plaintiff on that score.
>
> (emphasis added)

Finding

[124] D1's and D2's defence of fair comment fails because they failed to particularise in their defence which words in the respective statements are comments and which are facts.

[125] Nevertheless, even if the defendants had pleaded the requisite particulars as required under O. 78 r. 3(2) of the ROC and were able to prove that their statements were fair comments, based on the same reasons as my finding of express malice on their defence of qualified privilege, the presence of express malice in their statements would defeat their defence of fair comment.

Damages

[126] This court makes two separate awards against D1 and D2 for the defamatory statements which they had each published about the plaintiff. The separate awards are made against the D1 and D2 for the following reasons:

(a) because D1 and D2 had each made separate defamatory statements;

(b) the statements were made at two separate press conferences in conjunction with two separate events: one in Bukit Aman, Kuala Lumpur and the other in Bera, Pahang;

(c) the plaintiff's claim as pleaded is for two separate torts of defamation stemming from a statement made by D1 and a statement made by D2 at two separate press conferences; and

(d) the plaintiff's claim against D1 and D2 is not a joint claim of defamation against joint tortfeasors.

[127] In determining the quantum of damages for libel, the Federal Court in *Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee & Anor* [2018] 1 CLJ 145; [2017] 1 MLJ 133; [2017] 7 AMR 317 held that a trial judge is entitled to consider the seriousness of the libel and recklessness in its publication. And that it is important for the trial judge to look at the trend of award of damages made by the courts. Ahmad Maarop CJ (Malaya) in delivering the decision of the Federal Court held:

> [81] ... Therefore, in considering the award made by the trial court, it was important to look at the trend of awards of damages made by the courts in the country. Of course, it must be borne in mind that each case was to be decided on its own facts and circumstances ...
>
> [82] In the present appeal, the learned trial judge had considered *the seriousness of the libel, the extent of the publication, the plaintiff's reputation and the adverse effect of the defamatory statements on his dignity and reputation, and the conduct of the defendants including absence of remorse for defaming the plaintiff and in urging the court not to award any damages or costs to the plaintiff*, all of which the learned trial judge was entitled to take into account in assessing damages ...
>
> (emphasis added)

[128] In *Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee*, the Federal Court held that a total award damages of RM600,000 was reasonable for the first defendant, Datuk Yong Teck Lee's statements which the court found had defamed the plaintiff, Datuk Harris Mohd Salleh. The Federal Court affirmed the trial judge's finding that in the statements, Datuk Yong had inferred that Datuk Harris was possibly involved in the murder of the Sabah Chief Minister Tun Fuad Stephens and a number of leading Sabah politicians in the 6 June 1976 Nomad air crash (commonly referred to as the "double-

six" air crash). In his statements, Datuk Yong had asked for a re-investigation into the air-crash based on Tengku Razaleigh Hamzah's account of the tragedy and linked the issue to the assassination of John F Kennedy, Martin Luther King and Benazir Bhutto. The High Court found that "the sting lay beneath the surface". The learned High Court Judge, Abdul Rahman Sebli J (as he then was) held that read between the lines, and in the context of the speech by Tengku Razaleigh, Datuk Yong's call for re-investigation was in pith and substance a call to investigate the plaintiff for a possible involvement in a criminal act. His Lordship held that the first defendant insinuated that the plaintiff "had blood on his hands without making any attempt to verify the truth of the alleged new information revealed by Tengku Razaleigh".

[129] In assessing the damages for this instant case, I have following the Federal Court's decision in *Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee*, considered the following:

(a) The Seriousness Of The Libel

[130] In *Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee*, the defendant did not expressly state that the plaintiff in that case can be charged under the Penal Code for conspiracy to assassinate or murder of Tun Fuad Stephens and the other politicians in the "double-six" crash. The defamatory imputation in the defendant's press statements was his asking for a reinvestigation of the airplane crash based on what Tengku Razaleigh had said and the reference to the assassinations of John F Kennedy, Martin Luther King and Benazir Bhutto in the impugned statements.

[131] In contrast, in this instant case, D1 expressly stated that the plaintiff can be charged under SOSMA and s. 124L of the Penal Code for treason and D2 expressly stated that in his opinion, the plaintiff had committed treason and that she can be charged under POTA and the Penal Code for declaring war against the Yang di-Pertuan Agong.

[132] Similar, to the murder, declaration of war against the Yang di-Pertuan Agong is punishable by death or life imprisonment. For terrorism, which results in death, the crime is also punishable by death.

(b) The Extent Of The Publication

[133] D1's and D2's statements were broadcasted throughout Malaysia on the 8pm evening news on Astro Awani and TV1 and were reported in several national newspapers. It is not a situation where the statement was only recorded by one of the attendees of the event as in *Dato' Seri Anwar bin Ibrahim v. Khairy Jamaludin* [2018] 3 CLJ 250; [2017] 11 MLJ 673.

(c) The Plaintiff's Reputation And The Adverse Impact Of The Defamatory Statements On Her Reputation

[134] It is not disputed that plaintiff is a Vice President of PKR and she has a national and an international reputation. She was at the time the impugned statements were made, and is currently, a Member of Parliament. An

imputation that a person had committed treason, sabotage, terrorism and waging war against the Yang di-Pertuan Agong is highly serious and highly adverse to the reputation of any citizen of a country let alone a Member of Parliament, who as a lawmaker is expected to uphold the law and not to commit crimes against the State.

(d) The Conduct Of Both Defendants

[135] The defendants in their pleadings and submissions had urged this court not to award any damages or costs against the plaintiff. I also find there has been a complete absence of remorse on the part of both defendants. Even after they knew during the course of trial of the plaintiff's statements of regret on 21 November 2015 and the fact that the plaintiff's meeting with Jacel Kiram was not pre-planned, the defendants did not make any apology to the plaintiff. The Defamation Act 1957 in s. 10 provides:

> 10. Apology in mitigation of damages
>
> (1) In any action for defamation the defendant may (after notice in writing of his intention to do so duly given to the plaintiff at the time of filing his written statement of his case) give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation before the commencement of such action or as soon afterwards as he had an opportunity of doing so in case the action shall have been commenced before there was an opportunity of making or offering such apology.

[136] I find that this lack of remorse can also be seen from the learned Senior Federal Counsel's submission on behalf of the defendants, after the parties had closed their cases, that the plaintiff had brought the situation upon herself. Yes, I agree that the plaintiff should have refused Jacel Kiram's request for a photograph after the dinner. And I believe the plaintiff agrees too: hence her statements of regret issued on 21 November 2015. But how many people, particularly those in the public eye such as politicians or celebrities, have been approached by people, some they barely know, at a function or event with requests for "selfies" or photos to be taken on their camera or more often their camera phone. It does not mean that if they did not refuse the request for the "selfie" or "photo", it is justified for a third party, or as in this instant case the Inspector General of Police and a Minister of Cabinet, to publish defamatory statements about them and accuse them of serious crimes punishable by imprisonment or death based on the said "selfie" or "photo". To my mind, suggesting that the plaintiff brought the situation upon herself is not unlike suggesting that a victim of physical assault brought it upon herself by dressing inappropriately or by being at an inappropriate location.

(e) Recent Awards Of Damages For Libel

[137] An analysis of some recent cases involving libel of politicians, the damages awarded are as follows:

Case	Defamation	Damages
Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee [2018] 1 CLJ 145	Conspiracy to assassinate punishable by death.	RM600,000 (Federal Court)
Dato' Ahmad Rejal Arbee & Anor v. Mahfuz Omar [2015] 6 CLJ 149	Plaintiff misbehaved himself during a debate in Parliament by challenging another member of Parliament for a fist fight outside the Parliament building.	RM110,000 (Court of Appeal)
Dato' Seri Anwar Ibrahim v. Wan Muhammad Azri bin Wan Deris [2014] 9 MLJ 605	The defendant's website had published statements and articles containing sexually oriented defamatory statements regarding the plaintiff.	RM800,000 (High Court)
Datuk Seri Utama Dr Rais bin Yatim v. Amizudin bin Ahmat [2012] 2 MLJ 807	Plaintiff alleged to have raped a foreign maid.	RM300,000 (High Court)
Chin Choon v. Chua Jui Meng [2005] 2 CLJ 569	Plaintiff was corrupt and had accepted gratification of RM500,000 or RM600,000.	RM200,000 (Court of Appeal)
Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor [2015] 5 CLJ 301	Plaintiff had abused his political position for personal gain.	RM100,000 (High Court)
Dato' Hassan Mohamed Ali v. Tengku Putra Tengku Awang & Yang Lain [2010] 7 CLJ 856	Plaintiff was corrupt and dishonest.	RM50,000 (High Court)
Chong Siew Chang v. Ng Kim Ho & Anor [2011] 6 CLJ 62	Plaintiff was unfit to be a leader of a political party as he was a hypocrite or a villain.	RM100,000 (High Court)
Dato' Dr Tan Chee Khuan v. Chin Choong Seng [2011] 8 CLJ 574	Plaintiff was self-centred, unethical, an opportunist who was interested only in making money and hid his motive behind veil of charity.	RM150,000 (High Court)
Lim Guan Eng v. Utusan Melayu (M) Bhd [2012] 2 CLJ 619	P accused of being racist and anti-Malay in his actions.	RM200,000 (High Court)

[138] I find that from the analysis of the past cases in para. [137] above, the defendants' libel of the plaintiff in their impugned statements are one of the more serious libel made against a Member of Parliament to date. The reported cases show that no other person or politician had been accused of treason or waging war against the Yang di-Pertuan Agong. I also find that D1 and D2 were highly reckless in making the libellous statements without waiting for the completion of the police investigation and without making any enquiry with the plaintiff of the facts and circumstances of the meeting.

[139] The Federal Court had recently awarded in *Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee* damages in the sum of RM600,000 against the defendant for defamatory statements imputing that the plaintiff was involved in the "double-six" plane crash in 1976, which had killed the Chief Minister of Sabah, Tuan Mohd Fuad Stephens, and other senior Sabah politicians. Unlike this instant case, the first defendant, Datuk Yong Teck Lee, did not state in either of his press statements, that the plaintiff, Datuk Harris Mohd Salleh can be charged for conspiracy to assassinate or murder under the Penal Code. The Federal Court agreed with the trial judge's finding that the "sting" of defamation imputed by the High Court by the defendant's call of a reinvestigation of the plane crash and the reference in the statements to the assassinations of John F Kennedy, Martin Luther King and Benazir Bhutto.

[140] After conducting the analysis of (a) the seriousness of the libel; (b) the extent of the publication; (c) the plaintiff's reputation and the adverse impact of the defamatory statements on her reputation; (d) the defendants' lack of remorse; and (e) recent award of damages for libel including that by the Federal Court in *Datuk Harris Mohd. Salleh v. Datuk Yong Teck Lee*, I find that the damages to be awarded to each of the defendant are as follows:

(a) The sum of RM400,000 against D1; and

(b) The sum of RM600,000 against D2.

A lower sum of damages is awarded against D1 as compared to D2 because D1's defamatory statement was made during an occasion of privilege even though the privilege is defeated by the finding of express malice on the part of D1.

Decision

[141] For the reasons explained, there is judgment as follows:

(a) The first defendant is to pay damages of RM400,000 to the plaintiff;

(b) The second defendant is to pay damages of RM600,000 to the plaintiff;

(c) An injunction is granted to the plaintiff restraining further publications and broadcast of the impugned statements or anything similar of the defamatory matters;

(d) The first and second defendants to pay interest at the rate of 8% on the judgment sum from 26 November 2015 to 18 April 2018 and at the rate of 5% thereafter until the date of full payment;

(e) The first and second defendants to pay the plaintiff costs in the sum of RM80,000 for this proceedings subject to the payment of the allocator.

Order

[142] So ordered accordingly.

Endnotes:

1. Bundle B p. 16
2. Bundle B p. 17
3. Bundle B p. 31
4. Notes of proceedings p. 227
5. *"Defamation Principle and Procedure in Singapore and Malaysia"* by Doris Chia, LexisNexis, 2016 at p. 332, para. 13.5
6. "*Duncan and Neil on Defamation*" by Sir Brian Neill, Richard Rampton QC, Heather Rogers QC, Timothy Atkinson and Aidan Eardley; 4th edn, LexisNexis, 2015 at p. 181
7. "*Defamation Principle and Procedure in Singapore and Malaysia*" by Doris Chia, LexisNexis, 2016 at p. 251
8. Notes of proceedings at p. 217
9. Notes of proceedings p. 202
10. "*Defamation Principle and Procedure in Singapore and Malaysia*" by Doris Chia, LexisNexis, 2016 at p. 149
11. Notes of proceedings p. 221
12. Notes of proceedings p. 225